STATE OF VERMONT

SUPERIOR COURT Franklin Unit	CIVIL DIVISION Docket No. 34-1-19 Frcv
HUNTINGTON SCHOOL DISTRICT, Plaintiff, v. VERMONT STATE BOARD OF EDUCATION, et al., Defendants.	

RULING ON MOTION TO DISMISS AND

MOTION FOR JUDGMENT ON THE PLEADINGS

(Motion Nos. 8 and 9)

This dispute represents one of several suits raising similar issues related to the implementation of Act 46 (2015), as amended by Act 49 (2017). In the pending motions, the Defendants have moved to dismiss Plaintiff's Complaint and Petition for Declaratory Judgment (filed December 20, 2018) for failure to state a viable claim for relief. By this action, the Plaintiff seeks to prevent the unilateral merger of Huntington School District (hereinafter "Huntington") and Mount Mansfield Modified Union School District (hereinafter "Mount Mansfield"). See Complaint at 1; Plaintiff's Omnibus Reply Memorandum (filed May 17, 2019) at 2 ("Huntington filed its Complaint to prevent this merger.").

Huntington asks the Court, inter alia, to declare that the State Board of Education's November 30, 2018 Final Report of Decisions and Order on Statewide School District Merger Decisions Pursuant to Act 46, Sections 8(b) and 10 (hereinafter the "Final Order") is unconstitutional or void as applied to it. See Complaint at 20-21. On June 10, 2019, the Court held a hearing on the parties' motions. Upon consideration of the parties' arguments and submissions, the State Defendants' Motion to Dismiss and the Mount Mansfield's Motion for Judgment on the Pleadings are both *granted*.

I. Background

Courts consider motions to dismiss pursuant to Rule 12(b)(6) and motions for judgment on the pleadings pursuant to Rule 12(c) using similar standards. Messier v. Bushman, 2018 VT 93, ¶ 9, 197 A.3d 882. A motion to dismiss should not be granted unless "there exist no facts or circumstances" under which the nonmovant may be entitled to relief. Id. (citation omitted). "In reviewing the disposition of [a Rule 12(b)(6)] motion, this Court assumes that all well pleaded factual allegations in the complaint are true, as well as all reasonable inferences that may be derived therefrom." Kaplan v. Morgan Stanley & Co., 2009 VT 78, ¶ 7, 186 Vt. 605 (citations and quotation marks omitted).

Similarly, on a Rule 12(c) motion, "the issue is whether, once the pleadings are closed, [whether] the movant is entitled to judgment as a matter of law on the basis of the pleadings." Messier, 2018 VT 93, ¶ 9 (citation and quotation marks omitted). In either case, conclusory allegations with no asserted factual basis will not prevent dismissal. See Colby v. Umbrella, Inc., 2008 VT 20, ¶ 10, 184 Vt. 1.

The Plaintiff alleges the following: Huntington School District is an independent school district which owns and operates the Brewster-Pierce Memorial School for the education of children in the town from pre-kindergarten through grade 4. Complaint at 2. After grade 4, Huntington students attend Camels Hump Middle School in Richmond and then Mount Mansfield Union High School in Jericho, both operated by Mount Mansfield Modified Union School district. Complaint at ¶¶ 18-19.

Mount Mansfield is a modified union school district created in November 2014 pursuant to Act 156 (2012). Complaint at ¶¶ 4, 16. Currently, Huntington and Mount Mansfield are distinct entities which are overseen by the Chittenden East Supervisory Union (hereinafter "CESU"), which, in turn, is managed by a board composed of members of the Huntington and Mount Mansfield boards. Complaint at 7 and ¶ 17.

Following the passage of Act 46, on March 1, 2016, the Town of Huntington voted and rejected a proposed merger of its district with Mount Mansfield. Complaint at ¶ 37. In addition, Huntington did not submit a § 9 proposal under Act 46 to establish an alternative structure. Complaint at ¶ 38. On March 6, 2018, Huntington residents again voted against merger with Mount Mansfield. Complaint at ¶ 39.

On June 1, 2018, the Acting Secretary of Education issued a Proposed Statewide Plan for School District Governance. This proposed plan recommended that the State Board of Education "merge the Huntington Elementary School

District and the Mount Mansfield Modified Unified Union School District into a single UUSD [unified union school district] by requesting [Mount Mansfield] to accept the Huntington District as a full PreK-12 member." Complaint at ¶ 41. On April 27, 2018, the Huntington board presented testimony to the Agency of Education, and on August 15, 2018, to the Board of Education, concerning the proposed merger. Complaint at ¶ 42. Though it considered Huntington's testimony, the Board "did not hold evidentiary hearings or any kind of adversarial or other formal proceeding to adjudicate the school districts' rights." Complaint at ¶ 43.

On November 30, 2018, the Board of Education issued the Final Order. Complaint at ¶ 44. Therein, the Board "states that Huntington 'did not make a compelling case sufficient to overcome the preferred governance structure presumption in Act 46" and therefore ordered merger. Complaint at ¶ 47 (quoting the Final Order at 14). Regarding Huntington, the Final Order explains:

> The Mount Mansfield MUUSD assumed full responsibility, on July 1, 2015 for the PreK-12 education of students residing in Bolton, Jericho, Richmond, Underhill, and Buel's Gore, and for the grade 5-12 education of students residing in Huntington. The Huntington Elementary School District (HESD) remains an independent town district organized to provide for the PreK-4 education of its resident students.
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> The HESD did not submit a written Sec. 9 proposal, although its board members and others from Huntington urged the Secretary to not recommend merger based on concerns described in the Secretary's Proposal, at pp. 74-75. The Board agrees that the HESD and its community members did not make a compelling case sufficient to overcome the preferred governance structure presumption in Act 46 and did not assert that the merger is not "possible" or "practicable" to assume full PreK-12 membership in the unified district. In addition, if the MUUSD voters approve Huntington's admission as a full PreK-12 member, then it will be possible to designate the unified district as a supervisory district, the Legislature's "preferred structure."
>
> For these reasons, the reasons articulated in the Secretary's Proposed Plan for this district and as discussed at the Board's October 17, 2018 meeting leading up to its provisional decision for it, the Board: (i) finds that the Secretary's proposal satisfies and meets the requirements of Act 46, as amended, our Rules, and other applicable law, and (ii) approves the Secretary's proposal for this district.
>
> Accordingly, the Board confirms the provisional decision for this district made at its October 17, 2018 meeting and approves the Secretary's proposal for it for the reasons stated at that meeting and as reflected in the Minutes.

Final Order at 14-15; see Davis v. American Legion, 2014 VT 134, ¶ 13, 198 Vt. 204 (Where pleadings rely on outside documents, the court may consider them on a motion to dismiss.).

The Board of Education further ordered:

State Board of Education's "order merging and realigning districts and supervisory unions where necessary," pursuant to Act 46, Sec. 10(b)

Pursuant to the authority and mandates in 2015 Acts and Resolves No. 46, Sec. 8 and Sec. 10, as amended, and the provisions of 16 V.S.A. ch. 11, be it resolved that as of the date of this Order, the State Board of Education hereby:

[New Unified Union (i.e., PK-12) School Districts]

16) *Designates* the **Huntington School District** as a **prekindergarten through grade 12 member** of the Mount Mansfield Modified Unified Union School District ***provided that*** a majority of the voters of the Mount Mansfield Modified Unified Union School District present and voting at an annual or special meeting warned for the purpose on or before July 1, 2019 vote to approve the addition of the Huntington School District as a prekindergarten through grade 12 member pursuant to 16 V.S.A. § 721, at which time the Mount Mansfield Modified Unified Union School District:

a) Shall be a unified union school district;

b) Shall provide for the prekindergarten through grade 12 education of students residing in the town of **Huntington** beginning on July 1, 2019 under the terms and conditions specified in the union district's voter-approved Articles of Agreement; and

c) Shall supplant the Huntington School District pursuant to 16 V.S.A. ch. 11 on July 1, 2019, except that the Huntington School District shall remain in existence after that date for no more than six months for the sole purpose of completing any audits or any other task that the unified union school district is legally unable to perform.

Final Order at 30, 35-36 (emphasis in original); see Complaint at ¶¶ 48-51.[1]

II. Discussion

A. Count I

Huntington's Complaint sets forth four claims. As discussed infra, and as the parties recognize, the Court, in related Act 46 school merger cases, has issued a series of rulings in which it addressed the legal merits of most of Huntington's claims for relief. See Elmore-Morristown Unified Union School District v. Vermont State Board of Education, No. 32-1-19 Frcv, Ruling on Cross-Motions for Summary Judgment (Vt. Super. April 29, 2019) (hereinafter referred to as the "Elmore Ruling"); Athens School District v. Vermont State Board of Education, No. 33-1-19 Frcv, Ruling on Plaintiffs' Motion for Preliminary Injunction (Vt. Super. Ct. March 4, 2019), Ruling on Motions to Dismiss (Vt. Super. Ct. April 12, 2019), and Ruling on Cross-Motions for Summary Judgment (Vt. Super. Ct. June 18, 2019) (hereinafter referred to as the "Athens Preliminary Injunction Ruling," the "Athens Motions to Dismiss Ruling," and the "Athens Summary Judgment Ruling"). As a threshold matter, the Court notes that it has rejected the State's assertion that it generally has no jurisdiction to conduct Rule 75 review of orders embodied in the Final Report. See Elmore Ruling at 16-18.

In Count I, Huntington alleges that the Final Order constitutes an ultra vires administrative action. Complaint at 12. Under Act 46, the Board is charged with merging school districts. In this particular case, Mount Mansfield can consent, but cannot be forced, to merge with Huntington. Because Mount Mansfield was created in 2014, the merger directive is conditional upon Mount Mansfield's acceptance vote. See 2015 Vt. Laws No. 46 § 10(c)(3) ("This section shall not apply to . . . a district that, between June 30, 2013 and July 2, 2019, began to operate as a unified union school district. . .."). The Board's Final Order specifically designates that Huntington will become a member of Mount Mansfield, provided that a majority of Mount Mansfield voters approve its addition pursuant to 16 V.S.A. § 721. Final Order at 35. Accordingly, Act 46 permits the Board to merge Huntington and Mount Mansfield if Mount Mansfield consents and approves pursuant to 16 V.S.A. §721. This is what the Final Order provides, so it is difficult to see how the Board's provisional order and request that Mount Mansfield hold a vote constitutes an ultra vires action.

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[1] At oral argument, the parties advised the Court that, on June 6, 2019, Mount Mansfield voted to approve the addition of Huntington School District. On June 17, 2019, the Plaintiff filed a Motion to Amend the Complaint and for Permissive Joinder of Plaintiffs. In that Motion to Amend, Plaintiff seeks to add one count alleging that the June 6, 2019 vote violated the Open Meeting Law in that it did not comply with Robert's Rules of Order. As of this date, that motion is not ripe for review; however, it appears that this new proposed count is not relevant to the issues which the Court has addressed in this ruling.

B. Count II

The gravamen of the Plaintiff's claim in Count II is that the Board's Final Order, issued pursuant to Acts 46 and 49, constitutes an unconstitutional delegation and violates the separation of powers. Complaint at 15. The Court considered and rejected this argument. See Elmore Ruling at 25-29; Athens Motions to Dismiss Ruling at 6-7.

C. Count III

In Count III, Huntington asserts that the Final Order's requirement that it convey its assets to Mount Mansfield constitutes an unlawful taking under the U.S. and Vermont Constitutions. Complaint at 17. A constitutional "taking" ordinarily involves confiscation of private property for public use without compensation. See, e.g., Lorman v. City of Rutland, 2018 VT 64, ¶ 35, 193 A.3d 1174. "For a property loss to be compensable as a taking, the government must intend to invade a protected property interest or the asserted invasion must be the direct, natural, or probable result of an authorized activity and not the incidental or consequential injury inflicted by the action." Id. (citations, quotation marks and editing omitted).

As the Court has explained, the Act 46 transfers of assets do not involve private property; legally, they involve the State's transfer of its education-related property, which districts or municipalities have held in trust for the State. See Athens Summary Judgment Ruling at 15-19. Therefore, the conveyance at issue does not involve a taking as that term is constitutionally defined.

D. Count IV

Lastly, in Count IV, Huntington maintains that the Final Order represents a violation of the Vermont Administrative Procedure Act (VAPA) and the Due Process Clauses of the United States and Vermont Constitutions. Complaint at 18. Due process requires the government to observe certain procedural protections before it may deprive an individual of a protected property right. In re Miller, 2009 VT 112, ¶ 9, 186 Vt. 505. "Fundamentally, due process requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner." Id. (citation and quotation marks omitted).

"This Court has already found that entities such as the Plaintiffs do not have a fundamental right to any particular form of school governance; therefore, their objections to changes in school governance imposed under Act 46 do not implicate the violation of a constitutionally protected right." Elmore Ruling at 18.

In the alternative, the Court has observed:

> [T]he Board's Final Order is of a general nature in that it reflects decisions affecting a number of schools and school districts. By its nature and intent, the Final Order focuses on resolving the state-wide policy issues addressed in Acts 46 and 49. Finally, the Board's orders are of prospective applicability and future effect. In short, the Board's Final Order reflects "policy determination, involving general facts, and having a prospective application"; this type of administrative action is "characteristic of legislative function" which is not subject to due process protections.

Athens Motions to Dismiss Ruling at 9.

Lastly, the Plaintiffs assert that VAPA is applicable to the issuance of the Board's Final Order. Complaint at ¶¶ 96-97. Proceedings subject to the VAPA may require, inter alia, a hearing at which a party can present evidence and cross-examine witnesses. 3 V.S.A. §§ 809(c), 810(3). However, these requirements are applicable in a "contested case," that is, a proceeding "in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." Id. § 801(b)(2). Here, the Court has explained that the Board's actions were primarily legislative, not adjudicative. Moreover,

> [e]ven if the Board's actions are viewed as "quasi-judicial" in nature, the process implemented by the Legislature and employed by the Board was not governed by the types of procedures which ordinarily govern decisions in contested cases, such as following rules of civil procedure and subpoenaing witnesses. Cf. In re Professional Nurses Service Application for Certificate of Need, 2006 VT 112, ¶¶ 14-15, 180 Vt. 479. At a basic level, the Board was still implementing legislative directives, and the fact that the Plaintiffs' were provided notice of proceedings and opportunities to be heard in a meaningful time and manner provided them with the process to which they were due. See In Re Miller, 2009 VT 112, ¶ 9, 186 Vt. 505.

Athens Motions to Dismiss Ruling at 9-10. Accordingly, the VAPA is inapplicable.

Finally, it is noteworthy that Huntington did not submit a § 9 proposal. The Board's § 9 procedure would have provided Huntington the further opportunity to be heard that it now complains it did not sufficiently receive. See 2015 Vt. Laws No. 46, § 10, as amended by 2017 Vt. Laws No. 49, § 8; cf. Elmore Ruling at 19 ("The

[Elmore] Plaintiffs submitted their Section 9 proposals pursuant to this procedure. Thus, even assuming due process protections are applicable, it is difficult to discern how Plaintiffs were deprived of due process.").

III. Conclusion

The Plaintiffs' Complaint does not set forth a legally sufficient claim upon which relief can be granted.

The State Defendants' Motion to Dismiss (Motion No. 8) and the Mount Mansfield's Motion for Judgment on the Pleadings (Motion No. 9) are *granted.*

So ordered.

Dated at St. Albans, Vermont, this 19th day of June, 2019.

Robert A. Mello
Superior Court Judge